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ABSTRACT

Funding difficulties encountered by states in complying with early intervention service requirements of Part H of the Education of the Handicapped Act Amendments (1986) suggest the need for a variety of options to ensure successful long-term implementation. The advantages and disadvantages of three options are detailed: (1) fund all Part H services under Medicaid with no family income restrictions; (2) earmark portions of each major piece of federal legislation affecting children to assign funds for Part H services and increase appropriations to cover the earmarked portions; and (3) transform Part H into a new funding entitlement for infants and toddlers with disabilities and their families. Includes five references. (DB)

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Carolina Institute for Child and Family Policy

RECONCEPTUALIZATION OF FINANCING UNDER P.L. 99-457, PART H

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This report was prepared jointly by staff of Carolina Policy Studies Program (CPSP) and the National Early Childhood Technical Assistance System (NEC*TAS), supported by the Office of Special Education Programs, U. S. Department of Education. The contents do not necessarily reflect the position or policy of the U. S. Department of Education and no official endorsement by the Department of Education should be inferred.

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Based on case studies of financing of Part H services in six states as well as other data from the fifty states and the District of Columbia, it is clear that states are having great difficulty implementing the concept of financing early intervention services as envisioned in Public Law 99-457, Part H. According to our surveys of state progress (Harbin, Gallagher, & Lillie, 1989; Harbin, Gallagher, Lillie, & Eckland, 1990), states are slow to implement the financing provisions of the law. Our case studies of individual states have convinced us that even states which are relatively advanced in terms of meeting other requirements of the law are having considerable difficulty financing services (Clifford, 1991). Furthermore, states are experiencing substantial gaps between available resources and funding of service needs, even in the early stages of service provision (Kates, 1991).

Our studies suggest there is a real possibility of states dropping out of the Part H program because of an inability to finance the provision of services. In the short term, a two tiered system of financing -- one for a 1-2 year extension of planning in states not prepared for full implementation, and a second, larger funding level for states in the implementation phase -- will serve to keep nearly all states in the Part H program.

A number of proposals for adjustments in the program during the current reauthorization have been made, including those made by the Carolina Policy Studies Program (Gallagher, et al., 1991). While we think such proposals are sufficient in the short term, the long range solutions to full implementation of the law require a reconceptualization of the financing of services called for under Part H. Incremental changes will not resolve the underlying problems with the current approach.

The current categorical approach to the financing of services is dysfunctional for several reasons. Each different source requires a major investment of time and effort for state administrators. It is not unusual for personnel to spend a year or more working on access to a single source. For example, approval of Medicaid State Plan changes by the Health Care Financing Administration has been particularly slow. In addition, regulations change frequently, requiring constant work to keep up with the changes. Coverage of services under private health insurance has been unstable. Issues of "payor of last resort" have often been difficult to resolve. Determination of eligibility of expenditures for meeting matching requirements has also been problematic. All of these combine to make the expectation that states access the multiple resources difficult to meet.

Several options for longer term solutions to these problems are available. Three options are presented below, each of which has distinct advantages and disadvantages. While no financing system can address all of the concerns which have been expressed related to Part H services, these three options illustrate basic, reasonable approaches.

1. Fund all Part H services under Medicaid. All children and families would be covered under Medicaid, regardless of income, for services required under P.L. 99-457 Part H, and all such services would be eligible for reimbursement.
2. Earmark portions of each major piece of federal legislation affecting children to assign funds for Part H services and increase appropriations to cover the earmarked portion.
3. Transform Part H into a new funding entitlement for services for infants and toddlers with disabilities and their families.

Each of these options is presented in more detail below. Major advantages and disadvantages of each option are also given. Much more discussion and detailed analysis of the possible options is needed. However, it is our goal to stimulate this effort by presenting several alternatives.

OPTION 1. Fund all Part H services under Medicaid.

There are two parts of this proposal. First, all children and families would be covered under Medicaid, regardless of income, for services called for under P.L. 99-457, Part H. Second, all services called for under Part H would be eligible for Medicaid reimbursement. Currently, all children under six years of age in families earning up to 133% of the poverty level are eligible for payment for most, if not all, Part H services. This proposal would extend to all families, regardless of income, the opportunity to have services covered under Medicaid. Since Medicaid requires that other third party payors be billed for covered services, private insurers would continue to bear a portion of the cost of providing services. In addition, since Medicaid requires a state share, the federal government would be clearly spelling out its portion of the costs of providing the services. Currently the overall average ratio for Medicaid payments is approximately 57% federal and 43% state. Since the Medicaid federal financial participation rate for a given state (varying from 50% to approximately 80%) depends to some degree on the per capita income in the state, the federal government would pay a higher proportion of the costs in those states least able to afford services.

Under this proposal, the overall average proportion assumed by the federal government of the cost of providing Part H services would be set at this rate.

This proposal also calls for all Part H services to be covered under Medicaid. OBRA '89 expanded Medicaid's Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program to cover all services determined to be medically needed by an EPSDT screening and allowable by federal Medicaid rules, whether or not they are included in the state's Medicaid plan. Implementation of this proposal would be the logical extension of that legislation. A clearer delineation of the exact services covered under the law would be necessary to insure equity across states and regions of the country. Screening and diagnostic services currently covered under the EPSDT portion of Medicaid could be extended as well to cover the costs of identification of eligible children and families. It would be possible to also include coverage for major medical expenses for these children at the time they are determined eligible for Part H.

This proposal assumes that current funding for planning and coordination activities directly from Part H would be maintained. Funding for direct services from other sources, including Maternal and Child Health Block Grant, Title XX of the Social Security Act and Chapter 1, would be discontinued.

Advantages:

a. The Medicaid system is in place and functioning in every state. Thus no new bureaucracy would be created.

b. The system is differentiated to furnish more help to states least able to afford services, while still providing a substantial benefit for states with high per capita incomes.

c. The total cost would be a small part of the total $47 billion Medicaid program. Thus the program could be absorbed with relatively little disruption to the existing program. Furthermore it would be relatively palatable to legislators at both the federal and state levels.

d. This approach fits with current state efforts to maximize use of Medicaid for Part H services. States could continue to use existing state and local appropriations, in part, to match federal Medicaid dollars.

e. This plan would take advantage of the substantial work that has been done by states to accommodate to the fee for service nature of the Medicaid program.

f. The system would work although there are various state definitions of eligible populations.

g. The approach has a built-in financial advantage for states to broaden the definition of eligible children, but maintains a substantial state share to keep states from including children beyond the intent of the law.

h. The developmental delay definition of P.L. 99-457 is compatible with EPSDT.

i. The financing system would be substantially simplified. States would no longer be required to access the many different sources of funds currently expected and would be free to concentrate on coordination of services.

Disadvantages:

a. Some mechanism would need to be found to pay for screening and assessment of children found not to meet the requirements for eligibility under Part H. Even the costs of screening and assessment for Part H eligible children would have to be billed retroactively to Medicaid.

b. States are already clamoring about the rapid increases in Medicaid expenditures. Expansion of Medicaid in this way would exacerbate such criticism of the program.

c. State officials may believe that this approach to financing reduces the ability of states to control their own budgets (although, as long as Part H is an entitlement to services, states still have to assume responsibility for cost of services).

d. Many states are having difficulty accessing Medicaid for the currently eligible population. There is little evidence that making all Part H eligible children also eligible for payment for services under Medicaid will by itself improve access.

OPTION 2. Earmark portions of each major piece of federal legislation affecting children to assign funds for Part H services, and increase appropriations to cover the earmarked portion.

As cited above, there are substantial gaps in funding. Additional resources are required to insure that Part H services will be available to all who need them. The current legislation directs the lead agency in each state to assign financial responsibility to the various state agencies involved in providing or financing services. Yet no comparable mandate is placed on federal agencies (except in the case of Medicaid). This proposal accomplishes that objective at the federal level by writing into law designated portions of funding from each major program (in addition to Title XIX Medicaid) for financing services for infants and toddlers which must be spent on those infants and toddlers eligible for Part H services and their families. Included would be the following:

a. Education of the Handicapped Act, Part B, Assistance for Education of All Handicapped Children, and Part B, Section 619, Preschool Grants;

b. Chapter 1, Financial Assistance to Meet Special Education Needs of Children, Part D, Programs Operated by State Agencies, Subpart 2, Programs for Handicapped Children, and Part A, Basic Programs Operated by Local Education Agencies;

c. Chapter 1, Financial Assistance to Meet Special Education Needs of Children, Part B, Even Start Programs Operated by Local Education Agencies;

d. Chapter 1, Financial Assistance to Meet Special Education Needs of Children, Part D, Programs Operated by State Agencies, Subpart 1 - Programs for Migratory Children;

e. Head Start Act;

f. Comprehensive Child Development Act;

g. Social Security Act, Title V, Maternal and Child Health Block Grant;

h. Social Security Act, Title XX, Block Grants to States for Social Services;

i. Child Care and Development Block Grant;

j. Social Security Act, Title IV-B, Child Welfare Services and Title IV-A Grants to states for At-Risk Child Care;

k. Others as appropriate.

The Federal Interagency Coordinating Council would be allotted a small percentage of each source to conduct the coordinating efforts at the federal level.

Increased appropriations would be required for each federal agency so that early intervention services are not provided at the expense of other programs and services.

Advantages:

a. The plan provides a substantial incentive for each of the major agencies at the state level to be involved in the system.

b. Earmarking reinforces the use of existing programs and services.

c. This option gets additional funds into the system from both state and federal sources. Both federal and state governments would share the increases due to the matching requirements in, for example, the Maternal and Child Health Block Grant..

d. Using a variety of federal programs fits well with the intent of P.L. 99-457 to encourage coordination of both services and resources.

Disadvantages:

a. The plan may take away flexibility at the state level by mandating expenditures in what are, in some cases, block grant programs originally designed to give states increased flexibility.

b. Minimum requirements for expenditures often have a way of becoming de facto maximums as well. The approach could well limit expenditures from some sources.

c. The use of a variety of federal programs requires additional appropriations in a wide array of legislative initiatives at the federal level and would be complex to get through the various congressional committees.

d. This alternative maintains the complexity at the state level that has proven problematic for lead agencies.

OPTION 3. Transform Part H into a new funding entitlement for services for infants and toddlers with disabilities and their families.

Currently, funds provided under Part H may be used to fill gaps in the funding structure as the source of last resort. The funds available for this purpose are extremely limited. Yet there is evidence (Kates, 1990) that, in even relatively advanced states, the gap between available resources and funding of service need is in the range of 20% to 25% of the total required. Part H could become the source for financing this gap. Under this option, states would bill the federal government for a set proportion of the total state costs for providing those services which are not covered under existing resources. While the total amount would not be limited, the fact that the state government would be responsible for the remaining percentage of the total amount, would serve to hold down total expenditures.

The exact percentage could be set in one of several ways. The current Medicaid rate could be used. A new sliding rate based on state per capita income, or other factors, could be set which would require a larger part of costs to be borne by the wealthier states, helping to limit federal expenditures. Alternatively, a flat participation rate could be set for all states. For example, if a ratio of 60% state funds and 40% federal funds was selected, states would still have strong incentives to maximize Medicaid revenue (at 50% to 80% federal share) before using the Part H entitlement. A flat rate would also served to balance the variable match rate used by Medicaid. In any case, the state would be required to participate at the state rate determined in the new legislation.

Advantages:

a. This plan ensures that financing of services not currently covered will be provided.

b. It also ensures that costs are shared by the state and federal governments.

c. Expanding Part H funds builds on the current program and the five years of planning in which states have engaged.

d. It provides a funding program which is targeted directly toward providing services for the Part H population.

e. It facilitates and strengthens the role of the lead agency.

Disadvantages:

a. Establishing Part H as an entitlement adds a new structure involving additional staff and new procedures in the lead agency. The resulting program may be seen as competing with existing programs.

b. States with a low federal matching rate for Medicaid may try to restrict payments under Medicaid to take advantage of the higher rate under Part H. Thus this plan could only work if the Part H federal rate was lower than the federal Medicaid rate.

c. It would require an additional financial commitment from both the federal and state governments.

d. This option could be difficult to pass because of the belief that entitlement programs and runaway costs are inexorably linked.

SUMMARY & CONCLUSIONS

This short report has offered three options for reconceptualizing the financing of services under Part H. These options are based on findings, that for most states, the current fragmented method of financing has resulted in substantial gaps between available resources and funding needs. These alternatives differ in their relative advantages and disadvantages but they all have the advantage of addressing the long term need for financial stability for the Part H program. We believe that they can serve as a starting point for discussing changes in the role of the federal government in financing services under Part H of P.L. 99-457.

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